

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 81-484

30270

In re Petition of )  
 )  
PENINSULA COMMUNICATIONS, INC. ) BPTT-790906ID  
Homer, Alaska )  
 )  
To Terminate Operation of )  
K265AG, FM Broadcast Translator, )  
Licensed to KSRM, INC. )

MEMORANDUM OPINION AND ORDER

Adopted: OCTOBER 1, 1981 Released: January 11, 1982

By the Commission:

1. Before the Commission for consideration are: (1) the captioned petition filed by Peninsula Communications, Inc. ("Peninsula"), licensee of KGTL-FM, Homer, Alaska, to terminate operation of FM Translator Station K265AG in Homer; (2) Opposition to the Petition to Terminate filed by KSRM, Inc., licensee of Translator Station K265AG; (3) Reply to Opposition to Petition to Terminate; and (4) various responsive and supplementary pleadings. 1/

2. In January 1979, KSRM, Inc., licensee of KQOK-FM, Kenai, Alaska, commenced operation of an FM translator Station in Homer, Alaska, rebroadcasting the signal of its commonly-owned station KQOK-FM. Kenai is approximately 65 miles from Homer; and the 1 mV/m contour of station KQOK-FM is approximately 52 miles short of Homer. At the time the translator began service no other FM services were available to Homer, Alaska.

3. Subsequently, on July 12, 1979, the Commission granted Petitioner (Peninsula) a construction permit for authority to construct a new FM station in Homer, thereby bringing the first local FM service to the Homer area. The new station (KGTL-FM) commenced operation on September 22, 1979.

4. Peninsula filed its petition to terminate operation of translator station K265AG pursuant to Section 74.1232(h) of the Commission's Rules. Subsection (d) of that rule proscribes the licensing of an FM

1/ The various pleadings are: (1) Supplement to Petition to Terminate Operation; (2) Opposition to Supplement to Petition to Terminate Operation; (3) Informal Petitions to Terminate Operation; and (4) Informal Response to Petitions to Terminate Operation.

Federal Communications Commission

Docket No. 02-31 PCI Exhibit No. 1-A

Presented by PCT

Disposition { Identified 9/24/02  
Received 9/24/02  
Rejected \_\_\_\_\_

Reporter E Thomas

Date 9/24/02

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translator to a licensee of an FM Station if the translator is in a community beyond the 1 mV/m contour of the FM Station and is within the 1 mV/m contour of an existing FM station. Section 74.1232(h) permits the termination of a translator's operating authority, if circumstances since the grant have changed so that the authority would not have been originally granted.

5. Since KSRM is the licensee of both translator K265AG, Homer, Alaska, and of the FM Station (KQOK) whose signal the translator retransmits from Kenai, Alaska; and Homer, Alaska lies outside the 1 mV/m contour of KQOK-FM, the translator came within the purview of the termination provision of Section 74.1232(h) as soon as petitioner's (Peninsula) Homer, Alaska station commenced operation. We shall, therefore, examine the petition on the merits.

6. Peninsula's main contention is that given the competitive circumstances in Homer, Alaska, termination of the translator is mandated by our rules. In support of this contention Peninsula points out that when the Commission adopted its FM translator rules, the Commission recognized the problems that might arise from competition between full service FM stations and FM translators. 2/ Further, it maintains that one of the Commission's concerns was the potential economic threat to local FM stations that might arise from translators importing distant FM signals into small communities. 3/ Aware of these potential problems, the Commission fashioned translator rules and subsequent amendments around the premise that translators provide secondary, not primary services. 4/ In particular, Rule 74.1232(d) was proposed to limit a primary station rebroadcasting via a translator from taking unfair competitive advantage of a small community FM station. 5/

7. Peninsula further asserts that KSRM has aggressively used its translator as a competitive tool for expansion of its FM service area. KSRM admits to repeatedly representing, directly and indirectly, to Homer advertisers that Homer is KQOK's city of license. Not only were these representations made in newspaper advertisements but on posters and business cards as well. The only explanation provided by KSRM for these representations was that KQOK does not want to be perceived as a shortwave

2/ See Report and Order in Docket No. 17159, 20 RR 2d 1538 (1970); Notice of Proposed Rulemaking in Docket 19918, 44 FCC 2d 794, 39 Fed. Reg. 1867 (1974); Memorandum Opinion and Order in Docket 19918, 42 RR 2d 1127, 43 Fed. Reg. 14695 (1978); and First Report and Order in Docket 19918, 42 RR 2d 1124, 43 Fed. Reg. 14660 (1978).

3/ Notice of Proposed Rulemaking in Docket 19918 44 FCC 2d 794, 39 Fed. Reg. 1867 (1974).

4/ Report and Order in Docket No. 11611, 13 RR 1561, 1566 (1956).

5/ Memorandum Opinion and Order in Docket 19918, supra. (1978).

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station; neither does it want to be identified as a Kenai station since the translator is located in Homer, not Kenai.

8. We have examined the pleadings in this matter and conclude that petitioner has not demonstrated good cause for termination of the Homer translator station. Section 74.1232(d) of the Rules is permissive in nature and, therefore, allows, but does not require, termination of a translator upon a proper showing that the competitive situation in a market is such that the translator is likely to spell the demise of a local full service FM station. The evidence before the Commission in this case amounts to little more than an allegation of potential harm. Peninsula has provided scant financial or economic data to support its assertion that station KGTL-FM cannot survive if it is required to continue competing with translator station K265AG. We note that KGTL-FM has been in operation for more than two years which would appear to be a sufficient time period within which to establish itself in the Homer market. The fact of the station's current status as an operating station is some evidence of its ability to survive. The Homer public is clearly benefited by the availability of two commercial services. In view of the fact that the evidence before us does not demonstrate the imminent demise of KGTL-FM, we believe, on balance that the public interest is served by maintaining both commercial services in Homer.

9. Our denial of the petition to terminate should not be construed by KSRM as approval of its advertising practices in Homer. Representing to Homer, advertisers that Homer is KQOK's city of license is not the kind of conduct the Commission expects from one of its licensees. As a Commission licensee, KSRM is expected to be candid and honest in its dealings with the public. Indeed, a licensee's honesty and candor is the bench mark for the Commission's assessment of a licensee's fitness to become and remain a Commission licensee. Should KSRM continue such conduct in the future, the Commission may find it necessary to review KSRM's fitness to remain a Commission licensee.

10. We have also examined several unauthorized pleadings filed by the parties and we find nothing there of substance or decisional significance which would require a different resolution of this matter.

11. Accordingly, IT IS ORDERED, That, the petition to terminate filed by Peninsula Communications Corporation IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico  
Secretary